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September 1, 2000

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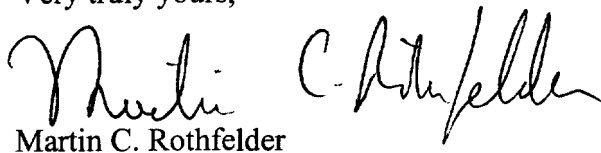
Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Portals II
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

**Re: I/M/O State of New York Department
Public Service Request for the Release of a New Area Code to
Provide Relief for the 716 Numbering Plan Area CC Docket
No. 96-98, File No. NSD-L-00-161 - Comments of Nextel
Partners, Inc.**

Dear Secretary Salas:

Enclosed is an original and four (4) copies of the Comments of Nextel Partners, Inc. for filing in the above referenced proceeding. I have also sent two (2) copies via Airborne Express to Mr. Al McCloud at the Network Services Division.

Very truly yours,


Martin C. Rothfelder

MCR/rmc

Enclosures

cc: Al McCloud

ITS

Lawrence G. Malone (General Counsel NY PSC)

Allan Bausbeck (Director NY PSC Office of Communications)

Greg Pattenaude (NY PSC Office of Communications)

Service list in NY PSC 716 proceeding (enclosed)

Randy Ammon

Don Manning

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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I/M/O State of New York Department of)	CC Docket No. 96-98
Public Service Request for the Release of a)	
New Area Code to Provide Relief for the 716)	File No. NSD-L-00-161
Numbering Plan Area)	

COMMENTS OF NEXTEL PARTNERS, INC.

I. Introduction and Summary

Pursuant to the Public Notice of the Federal Communications Commission ("Commission"), Nextel Partners, Inc.¹ ("Nextel Partners") respectfully submits these Comments concerning the request of the New York Department of Public Service ("NY PSC") for the Release of an Area Code to Provide Relief for the 716 Numbering Plan Area.

Nextel Partners urges the FCC to immediately order the NANPA to issue the new area code for relief in NPA 716. The NY PSC has acted lawfully in deciding the area code relief boundary pursuant to a delegation of authority explicitly authorized by FCC rules. The policy issue of the splitting of rate centers is properly addressed at the NY PSC proceeding or in prospective rulemakings at the FCC. Withholding the release of an NPA is not appropriate at this point and particularly harmful to wireless carriers and other non-LNP capable carriers.

¹ Nextel Partners, Inc. (Nextel Partners) provides a unique combination of two-way digital mobile telephone, text messaging, alpha-numeric paging and one-to-one and one-to-many dispatch services (Direct ConnectSM) using a single integrated handset. Such services are provided in upstate New York and other jurisdictions through the use of Nextel Partner's facilities and through interconnection with the public telephone network. Nextel branded service is also provided in much of the country by the separately owned company, Nextel Communications, Inc. Nextel Partners provides its services through special mobilized radio ("SMR") licenses issued by the Federal Communications Commission ("FCC") under Part 90 of its rules (47 C.F. R. § 90). SMR service is one type of commercial mobile radio service ("CMRS") as that term is defined in 47 U.S.C. § 332 and 47 C.F.R. § 20.3.

II. States Have Been Delegated Control Over Area Code Boundaries

Section 251(e)(1) of the Telecommunications Act of 1996, 47 U.S.C. §251(e)(1), provides the Federal Communications Commission (“FCC”) with exclusive jurisdiction over the administration of telephone numbers in the United States and also permits the FCC to delegate those duties. The FCC has promulgated rules which explicitly allow state regulatory commissions to carry out the area code relief function. 47 C.F.R. §52.19. This rule explicitly states that such delegated authority includes “establishing new area code boundaries.” 47 C.F.R. §52.19(a). This rule providing this authority does not limit states from splitting rate centers, nor does the general rule on numbering (47 C.F.R. §52.9) or any other rule or authority.

This is not the first time the NY PSC has provided an area code split which has passed through rate centers. The notice for these comments stated that the Common Carrier Bureau issued a letter that “urges state commission to conform to industry guidelines and to avoid adopting area code splits that do not follow rate center boundaries, as far as practical.” [cite] While that letter urges the states not to split rate centers, it does not prohibit the setting of boundaries which split rate centers. In fact, the FCC rules authorize this. Consistent therewith, that letter appropriately required the release of the area code for relief in New York NPA 914 -- despite the splitting of rate centers. The same action should be taken here. If, as a policy matter, it is appropriate to limit state authority to set boundaries for area codes to landline rate boundaries, a rulemaking or other similar action could have been pursued and still can be pursued here. Nevertheless, there is no basis in fact or law which would justify such a disruptive action in this case.

III. Carriers and Customers in NPA 716 are Harmed by the Continued Delay in Issuing a New NPA

On December 28, 1999, the North American Numbering Plan Administrator ("NANPA") issued a notice that NPA 716 was exhausted. Since then, some NXXs have become available due to the return of some NXXs and the release of the thirty codes formerly held for new entrants in the event of an overlay. During a NANPA convened conference call on August 24, 2000, NANPA advised that 70 codes remained. However, all codes are now under the control of the NY PSC and are either allocated by the NY PSC to pooling (and thus not to non-LNP carriers) or to carriers with emergency needs. Thus, for wireless carriers that are non-LNP capable, numbers are not readily available and are subject to a regulatory proceeding before the NY PSC. Purposefully enlarging the period of such uncertainty upon non-LNP capable carriers is unreasonable and unlawfully discriminates against the non-LNP capable segments of the industry.

With regard to Nextel Partners, in the normal course it would be able to apply for and obtain codes in NPA 716 to serve both the Rochester and North Tonawanda (Buffalo area) rate centers, since both are expected to exhaust in about 4 months. At the current time, in Rochester, the Nextel Partners code 716-303 has approximately 4900 numbers left.² Those numbers are being assigned to customers at a rate of approximately 1200 numbers per month and there are no immediate prospects for a new NPA. In North Tonawanda, its code 716-583 has approximately 5200 numbers left. Those numbers are also being assigned to customers at a rate of

² Nextel Partners, like other carriers, normally considers geographic growth rates such as those disclosed here to be proprietary and confidential, but due to the dire circumstances of its status in this NPA and the likelihood of this situation making it unable to properly sell its service, it has chosen to make public this data at this time.

approximately 1200 numbers per month, and there are no immediate prospects for a new NPA. Both rate centers have one other NXX which supplies some recycled numbers.

Even if the NY PSC has NXXs and provides NXXs for Nextel Partners in those two situations, under such growth rates Nextel Partners is using NXXs in those rate centers at a rate of one about every eight months. Prospects for the availability of subsequent NXXs to serve Nextel Partners in these rate centers are much more negative about regulatory authorities – including the FCC – taking steps to move the implementation of area code relief in NPA 716 expeditiously.

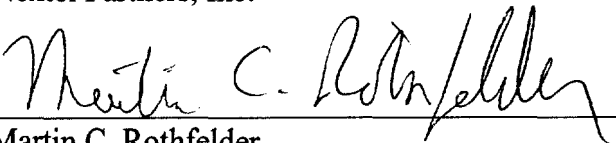
IV. CONCLUSION

The NY PSC lawfully executed the authority explicitly delegated to it under FCC rules to set area code boundaries in a manner that splits landline rate centers. While this policy issue of splitting rate centers during area code relief may merit reconsidering the FCC rules on the limits of state authority to set area code boundaries, this policy dispute provides no reasonable basis to further hold up area code relief in NPA 716. Area code relief for NPA 716 is long overdue and its delay will unreasonably, unnecessarily and unlawfully hurt non-LNP capable carriers and their customers. Thus, the FCC should order the immediate release of an NPA to allow implementation of area code relief in NPA 716.

Respectfully submitted,

Nextel Partners, Inc.

Date: 9/1/00


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